IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3406 OF 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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SHANKARBHAI JAGABHAI - Petitioner(s)
Versus
STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :
Ms. K. J. Brahmbhatt for Petitioner(s).
Shri Dipen Desai, AGP for Respondent Nos.1 - 4.
None for Respondent Nos. 5 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/06/2007

ORAL JUDGMENT

The short facts necessary for disposal of the present Writ Application are that the respondent No.3 had made allotment of 5 Acres

and 3 Gunthas of land bearing Survey No.79 situate at Village: Salemba to one Manjibhai, predecessor in title of respondent No.5. On 3rd May, 1963, said Manjibhai sold the land for a valuable consideration of Rs.2,499/- to one Jagabhai, predecessor in title of the present petitioner. The matter was informed to the Revenue Authorities, necessary entries were made and Village Form Nos.6, 7 and 12 were also accordingly corrected. After about fourteen years, the respondent No.5 issued a notice under Section 73A of the Bombay Land Revenue Code, 1879 (hereinafter referred to as "the Code" for the sake of brevity) to the petitioner asking him to show cause as to why he should not be summarily evicted. The petitioner appeared before the authority and filed his reply, but, the respondent No.4 *vide* his order dated 30th September, 1977, declared the transfer to be invalid and directed the petitioner to hand over the possession of the property to respondent No.5. Being aggrieved by the said order, the petitioner filed Revision Application No.85/1977 before respondent No.3 (Collector, District: Bharuch), who *vide* his order dated 30th May, 1978 allowed the revision of the petitioner. The respondent No.5, being dissatisfied with the order of the Collector, filed Revision Application No. 238 of 1978 before the Secretary (Appeals), Revenue Department. The said respondent No.2 allowed the Revision Application on 28th February, 1997. Therefore, the petitioner is before this Court.

2. Ms. Brahmbhatt, learned Counsel for the petitioner, submits that Section 73-A of the Code had come into effect on 1st August, 1963 and as the sale was effected on 3rd May, 1963, the provisions of Section 73-A would not apply to the transaction in dispute. She also submitted that a notification under Section 73-A could be issued by the Collector if no survey settlement was recorded. According to her, the survey settlement in relation to the land falling within Sagbara State was conducted in the year 1923, therefore, the notification under Section 73-A could not be issued. She also placed her strong reliance upon a judgement of this Court in the matter of ***Ahmedbhai Abdulgani Memon vs. State of Gujarat & Ors.***, [***1972 GLR 354***], to contend that the provisions of Section 73-A of the Code would not apply in the present set of facts.

3. Shri Dipen Desai, learned Counsel for the respondent-State, however, supported the order.

4. Section 73-A of the Code reads as under:

> "***73-A. Power to restrict right of transfer.-***
> *(1) Notwithstanding anything in the foregoing section, in any tract or village to which the State Government may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of this section applicable, occupancies shall not after the date of such notification be transferable without the*

previous sanction of the Collector.

(2) The State Government may, by notification in the Official Gazette, from time to time exempt any part of such tract or village or any person or class of persons from the operation of this section."

A fair reading and understanding of Section 73-A of the Code would make it clear that in any tract or village to which the State Government may, by notification published before the introduction therein of an original survey settlement under section 103, declare the provisions of Section 73-A applicable. According to the section, occupancies shall not after the date of such notification transferable without the previous sanction of the Collector. Section 73-A provides that a notification under the said section can be issued in respect of any tract or village in which survey settlement is not introduced, the area of operation of the section is clearly demarcated. Section 73-A specifies the area in which it can be brought into operation and the person or class of persons in respect of whom it can be brought into operation.

5. In the present matter, the findings recorded by all the authorities are that the survey settlement was conducted in the year 1923. If this is so, then, the notification under Section 73-A of the Code could not be issued. If the notification under Section 73A cannot be issued, then, the provisions contained in Section 73-A would not be

applicable and the land would remain alienable even without the permission of the Government.

6. The learned Secretary (Appeals), in view of the foregoing reasonings and discussion, committed an illegality of jurisdiction in setting aside the order passed by the Collector.

7. The order passed by the Secretary (Appeals) is hereby quashed and set aside and the order passed by the Collector is restored. In the result, the petition is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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